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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/061,129

11/13/2001

Thomas Tyson Lowery

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10/08/2008

BUCKLEY, MASCHOFF & TALWALKAR, LLC
GENERAL ELECTRIC COMPANY
50 LOCUST AVENUE
NEW CANAAN, CT 06840

EXAMINER

RETTA, YEHDEGA

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

10/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/061,129	Applicant(s) LOWERY, THOMAS TYSON	
	Examiner Yehdega Retta	Art Unit 3622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Yehdega Retta/
Primary Examiner, Art Unit 3622

Continuation of 11. does NOT place the application in condition for allowance because: Applicant is reminded that in response to the arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that as with powerbuyerservice.com, Joao does not teach or suggest the combination of receiving initial information regarding a customer lead from a first party, wherein the initial information identifies a service and the first party is a referral source other than said customer; and after receiving the initial information, identifying a second party that can provide the service and to which to provide at least a portion of the initial information, as recited in claim 1.

As indicated in the final action, Examiner points out that powerbuyerservice.com does not teach a refereeing party. Powerbuyerservice.com teaches user entering information identifying service and the powerbuyerservice.com identifying a provider for the service. The powerbuyerservice.com does not teach the information identifying service is received by a party other than the customer who needs the service. The powerbuyerservice.com also does not teach providing compensation to the second party since there is no second party (referring party). The referencing party and providing compensation (referring fee) to the referring party is taught in Joao. Joao teaches when it is determined that the user made a purchase or entered into a transaction the merchant calculates transaction commission due to the referring Content Provider. Joao also teaches that the commission can be earned or can be payable to any referring parties including brokers, agents, and/or other referring parties pursuant to any agreed upon terms and/or conditions between the respective parts to the affiliated marketing relationship. Joao teaches the Merchant computers equipped for processing transactions, to record user information, to ascertain and/or identify referring Content Providers and to maintain transaction and/or referral records and/or information (see [0093]).

Joao further teaches the merchant computer transmitting transaction record to the referring Content Provider computer including notification report which notifies the content provider that it has earned a commission and/or referral fee for referring the user to the merchant computer (see [0111] -[0119]). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to receive the information from a referring party and to provide referring fee the referring party to maximize revenue for the service provider and the third part by increasing clients that require services.

Applicant also argues that even if the merchant in Joao constitutes a second party, as appears to be asserted in the Office Action, Joao teaches away from a method that includes the combination of: receiving updated information regarding said customer lead from said second party; and determining compensation owed by said second party based, at least in part, on said updated information. Examiner respectively disagrees. Examiner would like to point out that Applicant does not indicate why Joao would teach away from the claimed method.

Applicant argues that the mere statement that a company may use telemarketers, call centers, marketing agents etc. to generate leads for the company does not does not teach or suggest modifying a referral source such as powerbuyerservice.com to use another referral source to generate the referrals. Applicant asserts that for at least the reasons above, it would not have been obvious to modify powerbuyerservice.com to include receiving initial information regarding a customer lead from a first party, wherein the initial information identifies a service and the first party is a referral source other than said customer, as recited in claim 1. Examiner provided Joao for the teaching that referring parties providing customer information and getting paid for the referral, which is the same concept disclosed by Applicant in the background of the specification. Joao teaches the use of referring party and the motivation why someone would use a referring party. Joao as indicated before, teaches commission earned or payable to any referring parties including brokers, agents, and/or other referring parties pursuant to any agreed upon terms and/or conditions between the respective parts to the affiliated marketing relationship (see [0093]). Joao further teaches the merchant computer transmitting transaction record to the referring Content Provider computer including notification report which notifies the content provider that it has earned a commission and/or referral fee for referring the user to the merchant computer (see [0111] -[0119]). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, not only it is disclosed by applicant that companies use telemarketers, call centers, marketing agents etc., to generate leads for the company, it is also disclosed in Joao. So Examiner would like to point out that Joao is also used to teach the claimed limitation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the powerbuyerservice.com to receive the customer information from a referral source, such as telemarketers, call centers or marketing agents in and to provide compensation for the service (referral fee), as in Joao, for referring the customer to the service provider to maximize revenue.